



# **ARKANSAS**

## **REAL ESTATE COMMISSION**

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# **REAL ESTATE REGULATIONS TIME-SHARE REGULATIONS AND FEDERAL FAIR HOUSING SUMMARY**

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**§17-42-101, ET SEQ.**  
**§18-14-101, ET SEQ.**

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## **SECTION 1. COMMISSION MEETINGS; APPEARANCES; SUBPOENAS.**

### **1.1 Meetings of Commission.**

(a) Regular meetings of the Arkansas Real Estate Commission shall generally be held on the Monday immediately preceding the second Tuesday of each month, and will continue in session until its business is completed insofar as is possible; provided, however, that any regular meeting of the Commission may be set forward, postponed, canceled or adjourned to another day.

(b) Special meetings of the Commission may be called at any time by a majority of the Commission.

### **1.2 Place of regular meetings.**

All regular meetings of the Arkansas Real Estate Commission shall be held in the Commission's offices unless otherwise specified.

### **1.3 Appearance before Commission.**

Any person desiring to appear before the Commission at any of its regular meetings to take up any business within the jurisdiction of the Commission shall, at least fifteen (15) days prior to such meeting, file with the director a written request therefor, in which the nature and purpose of the appearance shall be clearly and concisely stated with sufficient details to fully apprise the Commission of the basis and extent of such business. Provided, however, that a person may not appear before the Commission in connection with any matter pending before the Commission for administrative adjudication except upon notice and opportunity for all parties to participate.

### **1.4 Director to prepare agenda.**

The director shall arrange the order of business of all meetings of the Commission and shall, at least ten (10) days prior thereto, notify all persons who are to appear before any such meeting the place and approximate time he or she is to appear before the Commission.

### **1.5 Director to fix salaries.**

The director shall fix the salaries of all employees of the Commission within budgetary limitations.

### **1.6 Subpoenas.**

(a) Requests for subpoenas shall be in writing. The person requesting the subpoena has the burden of obtaining and serving the subpoena.

(b) Service of subpoenas issued by the Commission shall be as provided by Rule 45(c) of the Arkansas Rules of Civil Procedure as that rule now exists or as it may be amended from time to time.

(c) The fees and mileage of officers serving subpoenas and of witnesses subpoenaed shall be as provided by Rule 45(d) of the Arkansas Rules of Civil Procedure.

## **SECTION 2. DIRECTOR DUTIES, AUTHORITY AND RESPONSIBILITY.**

### **2.1 Director duties, authority and responsibility.**

(a) The director is the chief executive and administrative officer of the Commission, and, as such, is authorized to do all things necessary and convenient to carry into effect the Arkansas Real Estate License Law and Arkansas Time-Share Law and the regulations promulgated thereunder, subject to the general supervision of the Commission.

(b) All duties, authority and powers given the Commission by law, except rulemaking and adjudicative powers, are hereby delegated to the director, or the director's designee, who shall utilize and perform such duties, powers and authority under the general supervision of the Commission.

## **SECTION 3. FEES; BAD CHECKS; REFUNDS.**

### **3.1 Fees.**

The following fees are established at the amounts indicated:

- a) Application fee - \$50.00
- b) Original broker license fee - \$70.00
- c) Annual renewal broker license fee - \$70.00
- d) Original salesperson license fee - \$50.00
- e) Annual renewal salesperson license fee - \$50.00
- f) Broker expired license fee - \$100.00
- g) Salesperson expired license fee - \$70.00
- h) License reissuance fee - \$30.00
- i) Initial duplicate license fee - \$30.00
- j) Annual renewal duplicate license fee - \$30.00
- k) Transfer fee - \$30.00
- l) Appeal filing fee - \$100.00
- m) Recovery fund fee - \$25.00
- n) Examination fee shall be the actual cost charged by the testing service and shall be paid directly to the testing service.

### **3.2 Dishonored checks.**

(a) Any applicant or licensee who shall submit in payment of any fee a check or bank draft which is not honored by the bank shall not be eligible to receive a license from the Commission until such time as such check or bank draft is paid.

(b) The Commission shall charge a fee not to exceed \$25.00 for a dishonored check or bank draft and shall also require such check or bank draft to be made good immediately by the maker. If such person

shall be a real estate salesperson, associate broker or executive broker, and shall fail to make such check or bank draft good, the Commission may require payment of such funds from the principal broker with whom such person is licensed.

### **3.3 Overpayment of fees.**

In the event that an applicant or licensee shall submit to the Commission any funds which are in excess of the funds required by the Commission pursuant to Commission rule or state law, the Commission shall refund such overpayment according to the following schedule: If the overpayment is at least \$0.01, and not more than \$10.00, no refund shall be made; if the overpayment shall exceed \$10.00, the Commission shall first deduct \$10.00 for processing the refund check, and shall refund the remainder of the overpayment.

## **SECTION 4. APPLICATION AND EXAMINATION; EDUCATION AND EXPERIENCE REQUIREMENTS.**

### **4.1 Applications; education; experience.**

Applicants for original licensure as a broker or salesperson must apply on forms provided by the Commission, pay the application fee established by these regulations, and meet the following requirements:

(a) Broker applicants must provide proof of the following:

(1) Attainment of the age of majority, which proof may consist of a birth certificate or copy thereof, driver's license, or other document or proof of age which is satisfactory to the Commission;

(2) Successful completion within thirty six (36) months immediately preceding the date of the application of a course or courses of instruction in real estate principles, license law, and Commission regulations by actual classroom attendance or completion of approved distance education courses for not less than sixty (60) classroom hours. Applicants who are retaking only one part of the examination pursuant to Regulation 4.2 (c), shall remain subject to the requirement which was in effect at the time the applicant passed the other part of the examination. Proof of completion of such education requirement shall consist of the original certificate(s), or certified copies thereof, from the school or organization or other documentation satisfactory to the Commission;

(3)(A) Service by the applicant of an active bona fide apprenticeship by holding a valid real estate salesperson's license issued by the Commission, or by holding a valid real estate salesperson's license or broker's license issued by the appropriate licensing agency of another state, for a period of not less than twenty four (24) months within the previous forty eight (48) month period immediately preceding the date of application, which proof may consist of the official license records of the Commission or certified copies of licensure records of the appropriate licensing agency of another state, plus such other documentation as the Commission deems satisfactory to demonstrate that the applicant has gained experience in the real estate business equal to that which would be gained by a person engaged in the real estate business on

a full time basis during a minimum two year period of time; Listings, sales or other licensed activities may be considered by the commission in determining whether the applicant meets this qualification; Consideration shall be given to the broker applicant's local real estate market and/or specialized area of real estate practice. Any person whose application for broker license is denied by the executive director may appeal such denial to the Commission provided the request is in writing and received in the office of the Commission not later than sixty (60) days following the date of denial by the executive director.

(B) However, pursuant to Section § 17-42-303 (b)(2) the Commission may waive such experience requirement for a real estate broker applicant who has held an active real estate broker's license for a period of not less than eighteen (18) months or who has experience acceptable to the commission in a field considered real estate related for a period of not less than twenty-four months within the previous forty-eight-month period immediately preceding the date of application. Each request for such waiver shall be in writing and shall include such proof as necessary to establish the applicant's eligibility for the waiver. Such proof may consist of the official license records of the Commission, certified copies of license records of the appropriate licensing agency of another state, or such other documentation as the Commission deems satisfactory;

(4) The applicant's affidavit that he/she has no record of unprofessional conduct;

(5) Any other information or documents related to professional licenses held by the applicant; formal disciplinary actions by regulatory agencies; or, pending lawsuits filed or judgments entered against the applicant for fraud, deceit, dishonesty, misrepresentation, or conversion of property including money belonging to another.

(b) Salesperson applicants must provide proof of the following:

(1) Attainment of the age of majority, which proof may consist of a birth certificate or copy thereof, driver's license, or other document or proof of age which is satisfactory to the Commission;

(2) Successful completion of a course or courses of instruction in real estate by actual classroom attendance or completion of approved correspondence courses of not less than sixty (60) classroom hours, of which at least thirty (30) hours must be in the basic principles of real estate; which proof shall consist of the original certificate(s), or certified copies thereof, from the school or other organization or other documentation satisfactory to the Commission;

(3) The applicant's affidavit that he/she has no record of unprofessional conduct;

(4) Any other information or documents related to professional licenses held by the applicant; formal disciplinary actions by regulatory agencies; or, pending lawsuits filed or judgments entered against the applicant for fraud, deceit, dishonesty, misrepresentation, or conversion of property including money belonging to another.

(c) (1) Effective January 1, 2006, the Commission may require each original applicant for a salesperson or broker license, including nonresident applicants applying pursuant to Arkansas Code Ann. § 17-42-305, using forms furnished by and pursuant to instructions provided by the Commission to apply for a state and federal criminal background check to be conducted by the Identification Bureau of the Department of Arkansas State Police and Federal Bureau of Investigation pursuant to Arkansas Code Ann. § 17-42-315.

(2) "Criminal background check" means a state and nation-wide criminal records check conducted by the Arkansas State Police and Federal Bureau of Investigation, including the taking of fingerprints.



(3) Each such applicant shall submit, prior to or with the Application for Real Estate Examination, the form furnished by the Commission authorizing the release of the applicant's criminal background check report to the Commission and shall pay any applicable fees, associated with the State and Federal criminal background checks, pursuant to written instructions provided by the Commission. The release form shall authorize the Identification Bureau of the Arkansas State Police to forward all criminal history information obtained concerning the applicant in regard to any offense referred to in Arkansas Code Ann. § 17-42-315 to the Commission.

(4) The criminal background check shall be completed within six months immediately preceding the date the Application for Real Estate License Examination is received in the Commission's office, and if not, the application shall be returned to the applicant.

(5) Upon request and proof of identification satisfactory to the Commission the Commission may make the report of any criminal information available to the applicant who is the subject of the report and shall provide the applicant a reasonable time to challenge the accuracy or completeness of the information therein, through the State Identification Bureau pursuant to Arkansas Code Ann. § 12-12-211 and Arkansas Crime Information Center Regulation 7(F).

(6) Should an applicant challenge his/her conviction report, he/she shall notify the Commission in writing. After receipt of such notice, the Commission shall not determine whether an applicant is qualified for the license applied for until the applicant has had reasonable opportunity to challenge said conviction report and shall not process the application until the challenge of said report is resolved by the State Identification Bureau and/or Arkansas Crime Information Center. The applicant shall notify the Identification Bureau to forward to the Commission changes in the applicant's report as a result of any such challenge.

(7) Except as provided in Arkansas Code Ann. § 17-42-315 (g), no person shall receive or hold a license issued by the Commission if the person has been convicted by any court in the State of Arkansas or of any similar offense by a court in another state or of any similar offense by a federal court of an offense identified in Ark. Code Ann. § 17-42-315 (f).

(8) After a hearing the Commission may waive a conviction identified in the preceding paragraph, upon application of the applicant, pursuant to the provisions of Ark. Code Ann. § 17-42-315 (g).

(d) All classroom hours required by Regulation 4.1(a) and (b) shall be conducted by:

- (1) An accredited postsecondary school wherever situated; or
- (2) A school or organization licensed by the State Board of Private Career Education.
- (3) A school or organization approved by a real estate licensing jurisdiction deemed equivalent by the Commission.

(e) The course or courses of instruction requirements of Regulation 4.1(a) and (b) may be satisfied by successful completion of such distance education courses as the Commission may by regulation require, giving due consideration to the number of hours necessary to provide instruction in basic competencies required for a broker's license or salesperson's license, as the case may be, and to the advice and recommendations of the State Board of Private Career Education.

(f) Both broker and salesperson applicants shall also answer all questions and provide all information requested on the examination application, and shall provide such other information or documentation as the Commission may require.

(g) Applicants that have provided all requirements of Regulation 4.1, may sit for the real estate examination, provided that a state and federal criminal background check, as required by ACA § 17-42-315, has been sent to the Identification Bureau of the Department of Arkansas State Police for a state and federal criminal background check. However no license shall be issued upon successful completion of the examination, until receipt and approval by the Commission of the state and federal criminal back ground check.

(h) All applications expire one (1) year after the date of the application or upon successful completion of the examination, whichever first occurs. Provided, however that the application of an applicant who takes and passes either part of the examination within one (1) year from the date of his application shall not expire until the six (6) months allowed for retaking the failed portion pursuant to Regulation 4.2(c) has expired.

(i) Application fees are non-refundable.

#### **4.2 Examinations; passing scores; reexaminations.**

Applicants for original licensure as a broker or salesperson must pass a written examination to demonstrate competency to act as a real estate licensee in such a way as to safeguard the interests of the public. The examination shall consist of a general part and an Arkansas law part.

(a) For broker applicants a minimum score of seventy (70) on the general part and seventy-five (75) on the Arkansas law part are required. A person who is licensed as a broker may not apply and may not take the examination. A person who has passed the Arkansas real estate broker's examination but who is not licensed as a broker may apply. However, in addition to meeting other requirements, such a person must furnish an affidavit stating the reason for applying. Such a person may take the examination only with written permission from the director or the director's designee.

(b) For salesperson applicants a minimum score of seventy (70) on the general part and seventy (70) on the Arkansas law part are required. A person who is licensed as a salesperson or as a broker may not apply and may not take the examination. A person who has passed the Arkansas real estate salesperson's examination but who is not licensed as a salesperson may apply. However, in addition to meeting other requirements, such a person must furnish an affidavit stating the reason for applying. Such a person may take the examination only with written permission from the director or the director's designee.

(c) An applicant who takes the examination in Arkansas and passes either the Arkansas law part or the general part but fails the other need not again take the part passed if within six (6) months of such initial examination the applicant retakes and passes the part failed. Otherwise, the applicant must retake the entire examination, and must also make new application if more than one (1) year has elapsed since the date of the original application.

(d) (1) An applicant who meets all three (3) of the following requirements will be required to take only the Arkansas law part of the examination:

(i) Has passed a uniform, general, or multi-state part of an examination for a real estate license in another state in which the examination is determined by the Commission to meet generally acceptable standards of real estate testing, and

(ii) The other state requires a minimum passing grade no lower than that required for the general part of the Arkansas examination, and

(iii) The applicant at the time of taking the Arkansas examination is licensed in the other state.

(2) If an applicant meets the first two (2) requirements above, but not the third, the applicant will be required to take only the Arkansas law part of the examination provided that the applicant passed the uniform, general, or multi-state part of the examination in the other state within six (6) months prior to the month in which the applicant takes and passes the Arkansas law part.

(3) An applicant seeking licensure under this Regulation 4.2(d) must furnish such documentation of entitlement thereto as the Commission may require.

#### **4.3 Examinations; application procedure; time requirements.**

(a) The Commission shall announce from time to time the dates and locations of examinations. All applications should be received in the Commission office at least ten (10) days before the examination for which the applicant desires to sit. However, regardless of the date on which the application is received by the Commission, it shall be processed as expeditiously as possible under the circumstances. Once the application is processed, the Commission will send to the applicant a "Certificate of Examination Eligibility." The certificate will include instructions for making examination reservations and will be required for admission at the test center.

(b) An examination fee which shall equal the actual cost of the examination as established by the testing service engaged by the Commission will be collected at the test center. The examination fee shall be made payable to the testing service unless the applicant is otherwise notified by the Commission. The examination fee shall be charged each time an applicant applies to take an examination and is non-refundable.

(c) An applicant shall receive notice upon passing the examination. Each successful broker and salesperson applicant shall pay to the Commission, within ninety (90) days from the date of the successful completion of the examination, the appropriate license fee and recovery fund fee. However, the payment of the recovery fund fee shall be waived for any successful applicant who has previously paid such fee. If a successful applicant shall fail to pay the prescribed fee(s) within ninety (90) days following the date of the examination, the examination results shall be null and void, and the applicant shall be required to make new application and retake the examination, as an original applicant. If the Federal criminal background check has not been received by the commission within ninety (90) days of the date of the examination, the date may be extended by the commission until receipt of the Federal criminal background check.

#### **4.4 No duplication of credit for educational courses.**

No educational courses or hours submitted as credit toward the prelicensing education requirement shall be used as credit for the continuing education requirements, and no educational courses or hours submitted for credit toward the continuing education requirements shall be used or counted to satisfy the pre-licensure educational requirements.

### **SECTION 5. NONRESIDENT LICENSURE.**

#### **5.1 Application.**

Upon receipt of an application for nonresident licensure under Section 11(a)(1)(B) of Act 690 of 1993 [A.C.A. §17-42-305(a)(1)(B)], the director shall determine whether the applicant's resident jurisdiction offers Arkansas licensees opportunities for licensure substantially comparable to those offered to that jurisdiction's licensees by Arkansas.

## **5.2 List of approved jurisdictions.**

The director may maintain and publish from time to time a list of jurisdictions which have been previously determined to offer Arkansas licensees opportunities for licensure substantially comparable to those offered to that jurisdiction's licensees by Arkansas. If an applicant's jurisdiction is not on the list the director may, upon request, investigate and determine whether it should be.

## **5.3 No hearing on denial.**

An applicant whose application for licensure under Section 11(a)(1)(B) of Act 690 of 1993 [A.C.A. §17-42-305(a)(1)(B)] is denied is not entitled to a hearing on such denial.

## **5.4 Written agreements with other jurisdictions.**

The director is authorized to enter into written agreements with licensing authorities of other jurisdictions to assure opportunities for nonresident licensure in those jurisdictions for Arkansas licensees.

# **SECTION 6. RENEWAL; INACTIVE STATUS; EXPIRED LICENSES.**

## **6.1 Renewal applications.**

Notice to renew licenses will be sent by mail about July 15 of each year to the firm at which the licensee is licensed or such other address as the Commission has on file for the licensee. Renewal applications accompanied by the required fee must be filed with the Commission no later than September 30. In order to be considered filed with the Commission by the deadline; the renewal applications must bear a U.S. Postal Service postmark of September 30, or be received in the Commission's office on or before September 30. If September 30 falls on a Saturday, Sunday or legal holiday, the Commission shall accept as meeting the filing deadline those renewal applications that bear a U.S. Postal Service postmark of the first business day thereafter, and those applications received in the Commission office on the first day the office is open to the public following such Saturday, Sunday or legal holiday. A renewal application filed after the deadline shall be treated as an application to renew an expired license.

## **6.2 Inactive status renewal.**

(a) Any licensee who does not wish to engage in the real estate business at the time of renewal may apply to renew as inactive.

(b) Any person who holds a license on inactive status shall notify the Commission in writing within seven (7) days of any change of name or address.

(c) During inactive status a licensee shall not practice as a real estate broker or salesperson in this state without first activating the license.

(d) An inactive license may be activated upon submitting proof of satisfactorily completing six (6) classroom hours or equivalent continuing education units or equivalent correspondence work of approved continuing education for each year renewed as inactive, not to exceed thirty (30) classroom hours, and such other information as the Commission may require, including payment of the required fee. Completion of the continuing education requirement will only satisfy the requirement for the license year in which activated and not for the following year.

(e) All continuing education hours required to activate a license must have been completed in the year in which the license is activated or the preceding calendar year.

### **6.3 Expired licenses.**

(a) If an application for the renewal of a license, either active or inactive, and/or the required renewal fee is not received prior to the renewal deadline, such license is deemed to have expired at the end of the renewal period.

(b) A person whose license has expired shall not practice as a real estate broker or salesperson in this state.

(c) Upon reapplication within three (3) years of the last calendar year in which the license was renewed, payment of the required fees, and submission of such additional information as the Commission may require, the license may be reinstated and placed on either active or inactive status for the current license year. However, no license will be issued as active until proof of satisfactory completion of the continuing education requirement as required by Regulation 6.2 is submitted.

(d) Upon successful reapplication all prior years identified as expired will be considered as if inactive for purposes of continuing education requirements.

(e) A former licensee who fails to apply for renewal of an expired license within the prescribed time period shall be regarded as an original applicant.

(f) For purposes of providing notice to and communication with any licensee who permits or has permitted his license to expire and who is the subject of a pending complaint, investigation or hearing pursuant to A. C. A. § 17-42-312, said licensee shall during any such pending complaint, investigation or hearing notify the Commission in writing within seven (7) days of any change of name or address.

## **SECTION 7. FIRM NAME; OFFICES; SIGNS; TRANSFERS; CHANGE OF ADDRESS.**

### **7.1 Firm name approval.**

The Commission shall issue no principal broker's license where the proposed name of the firm is confusingly similar to the name of another firm, is misleading, or would in any way be confusing to the public. It shall be the duty of the principal broker to inquire of the Commission concerning the acceptability of the proposed firm name.

## **7.2 Temporary license.**

No person shall act as a licensee in Arkansas until such person has received from the Commission a current valid license and pocket card stating the name of the firm with which the licensee is affiliated. However, a temporary interim license may be issued pending issuance of the permanent license and pocket card, which temporary interim license shall be valid for a period of not more than thirty (30) days.

## **7.3 Place of business; sign.**

(a) A principal broker shall maintain a place of business and shall display at such place of business a permanently attached sign bearing the name under which the principal broker conducts his/her business, and the words "real estate," "realty," "REALTOR®," "REALTIST" or other words approved by the Commission which clearly indicate to the public the principal broker is engaged in the real estate business. Photographs of the sign and of the front or other part of the building where the sign is displayed shall be furnished to the Commission. A principal broker must display his/her broker's license and the licenses of any executive broker, associate broker or salesperson at the place of business.

(b) The Commission shall accept no sign as meeting this requirement until and unless such sign is permanently attached and clearly visible to the public and displayed in such a manner as to clearly indicate to the public that the principal broker is engaged in the real estate business.

(c) If a principal broker shall establish an office within an office building, the principal broker shall furnish (1) a photograph of the office building directory showing the real estate firm's name, and also (2) a photograph of the firm's office entrance bearing the name of the firm, unless either is nonexistent, in which case the other shall be furnished.

(d) If a principal broker shall move or change any sign of which a photograph has been filed with the Commission, the principal broker shall notify the Commission office immediately in writing of the new location or change and furnish a photograph of the new sign. If the principal broker's business location shall also change, the broker shall comply with Section 15 of Act 690 of 1993 [A.C.A. §17-42-309 and §17-42-310] and applicable regulations.

(e) The principal broker shall furnish both the street address or physical location and the mailing address for the business.

(Amended 8/31/2007)

## **7.4 Branch office.**

(a) All branch offices shall have and display a real estate sign and a duplicate principal broker's license. Principal Brokers who wish to open a branch office shall furnish the Commission a photograph of the branch office sign as previously approved by the Commission bearing the name of the company. If licensees are to be licensed at that branch office, an executive broker shall be designated by the principal broker, to be in charge of the branch office. Such executive broker shall be responsible for any licensee licensed with such branch office pursuant to a written designation of responsibility filed by the principal broker with the Commission on a form provided by the Commission consistent with Regulation 10.4(a)(1), and shall not be gainfully employed or engaged in any non-real estate related field pursuant to Regulation 10.4(e).

(b) If such branch office, maintains its own trust account or separate escrow agent the principal broker shall be responsible and accountable for any and all trust funds received by the branch office and any and all deposits to or disbursements from the trust account.

(1-2010)

(c) A principal broker of a licensee that is licensed at the principal broker's place of business or any branch office thereof may authorize that licensee to be issued a duplicate license at the principal broker's place of business or at any branch office where the principal broker holds a duplicate license. Provided, however, a duplicate license shall not be issued at a branch office unless an executive broker has been designated to be in charge of the branch office.  
(Amended 1/1/2010)

## **7.5 Termination or transfer.**

(a) Within seven (7) days after the employment or association of a licensee with a principal broker ends, such principal broker shall notify the Commission of such termination and return to the Commission the license and pocket card of the terminated licensee. Such notification shall automatically inactivate the license. Immediately upon termination, the terminated licensee shall deliver to the principal broker his/her pocket card.

(b) The license of a licensee terminated under Regulation 7.5(a) may be transferred to another firm, after the license and pocket card have been returned to the Commission, by the licensee's filing with the Commission a transfer application signed by the new principal broker. Such transfer application must be accompanied by (1) a statement that the licensee is not taking any listings, management contracts, appraisals, lease agreements, or copies of any such documents, or any other pertinent information belonging to the former principal broker or firm, and (2) a transfer fee. At the time the transfer application and the accompanying items are filed, a temporary interim license may be issued.

(c) If an actively licensed broker or salesperson does not wish to continue to engage in the real estate business, such broker or salesperson shall return any license and pocket card in his/her possession to his/her principal broker who shall then return these items to the Commission for inactive status. A broker who closes his/her firm shall remove all signs reflecting the company name and shall return all licenses and pocket cards issued to the principal broker to the Commission office for inactive status. If a real estate firm shall close its office, any real estate salesperson licensed with such principal broker shall be entitled to transfer to a new principal broker upon compliance with the appropriate provisions of the Arkansas Real Estate License Law and Commission regulations.

(d) If the principal broker is deceased, unavailable, or for any reason unwilling or unable to act, then the licensee has the responsibility to notify the Commission in writing of the termination or transfer and of returning the pocket card and license.

(e) A principal broker of a real estate firm or designated executive broker of a branch office, who has no ownership interest in the firm, who is terminated by the firm's owner or designee, shall notify the Commission in writing immediately upon termination. The written notification must include a statement that the principal broker or branch office designated executive broker has been terminated by the owner of the firm or designee, and that the terminated principal broker or executive broker is relinquishing his/her responsibilities as principal broker or branch office designated broker effective the termination date. The respective broker license and pocket card must be returned with the written notification.

If the real estate firm or branch office is not closing, and another principal broker or branch office designated broker is not immediately available to assume responsibilities of the real estate firm or branch office, the owner of the real estate firm may request in writing that the Commission permit the real estate firm to continue operating pursuant to Regulation 7.7.

If the owner of the real estate firm closes the firm and ceases to do business and maintain an office, the principal broker shall notify the commission in writing of said closing, return all licenses and pocket cards to the commission and comply with Regulation 10.7(c).

A principal broker or branch office designated executive broker who has been terminated by the real estate firm owner or designee of a real estate firm that is not closing, and who does not notify the commission in writing, relinquish responsibilities as principal broker or designated branch office executive broker, and return his/her broker license and pocket card to the commission, shall be presumed to be in violation of A.C.A. § 17-42-311 and subject to appropriate sanctions.

#### **7.6 Change of address; lost license or pocket card.**

(a) Upon any change of name, address or place of business, or upon the loss or misplacement of a license or pocket card, the licensee shall promptly notify the Commission of such change or loss on a form prescribed by the Commission. Upon receipt of such notice and other information as may be necessary to issue a new license, the Commission shall issue a new license for the unexpired period of the license upon the payment of the license reissuance fee.

(b) All licensees, both active and inactive, shall at all times keep the Commission informed in writing of their personal residence address, physical business address and mailing address.

#### **7.7 Death of principal broker; closing of business.**

Upon the death, resignation, termination or incapacity of a principal broker or the closing of a real estate firm, the Commission may in its discretion, based upon the merits and circumstances of each case, permit the real estate firm to continue operating for a period of time under the direction of a person approved by the Commission and subject to time limitations and other conditions imposed by the Commission. Unless otherwise determined by the Executive Director, the time of such approval is to be effective at the time of death, resignation, termination or incapacity of the principal broker.

### **SECTION 8. AGENCY DISCLOSURE.**

#### **8.1 Seller or lessor agents.**

(a) (1) In any real estate transaction in which a licensee is acting solely as agent for a seller or lessor, the licensee shall disclose to a potential buyer or lessee, or to the buyer's or lessee's licensed agent, the licensee's agency relationship with the seller or lessor. Such disclosure shall be made in a timely manner under the particular circumstances so as to avoid to the extent possible eliciting or receiving from the prospective buyer or lessee information which would reasonably be expected to remain confidential and not disclosed to the seller or lessor, such as, for example, information concerning the real estate needs or motivations, negotiating strategies or tactics, or the financial situation of the potential buyer or lessee.

(2) When the disclosure is made to the licensed agent of the buyer or lessee, it is that licensee's duty to convey the disclosure to the buyer or lessee in a timely manner.



(b) In all cases, disclosure shall be in writing, but may initially be made orally and reduced to writing at a convenient time subject to the requirements of Regulation 8.1(c). Evidence of the disclosure shall be maintained by the licensee.

(c) In all cases, however, such disclosure must be made before the buyer or lessee signs any document related to the transaction, such as an offer or lease or rental agreement.

## **8.2 Buyer or lessee agents.**

(a) (1) In any real estate transaction in which a licensee is acting solely as agent for a buyer or lessee, the licensee shall disclose to a potential seller or lessor or to the seller's or lessor's licensed agent, the licensee's agency relationship with the buyer or lessee. Such disclosure shall be made at the first contact with the seller, lessor, or the agent of the seller or lessor.

(2) When the disclosure is made to the licensed agent of the seller or lessor, it is that licensee's duty to convey the disclosure to the seller or lessor in a timely manner.

(b) In all cases, disclosure shall be in writing, but may initially be made orally and reduced to writing at a convenient time subject to the requirements of Regulation 8.2(c). Evidence of the disclosure shall be maintained by the licensee.

(c) In all cases, however, such disclosure must be made before the seller or lessor signs any document related to the transaction, such as an offer or lease or rental agreement.

## **8.3 Dual agency.**

(a) A licensee who represents both the seller and buyer in a real estate sale transaction, or both the lessor and tenant in a real estate lease or rental transaction shall make disclosure in the time and manner required by Regulations 8.1 and 8.2 and all parties to the transaction must have given their written consent to such dual representation prior to or at the time of execution of the agency contract, listing contract, property management contract, lease, rental agreement, offer and acceptance contract or other real estate contract.

(b) Notwithstanding Regulation 8.3(a), a licensee shall not accept a commission, rebate, profit, payment, compensation or other valuable consideration in connection with a real estate transaction or real estate activity from any person or entity except the licensed principal broker under whom the licensee is licensed.

## **8.4 Failure to disclose agency relationship.**

A licensee who fails to disclose the licensee's agency relationship in the time and manner required by these regulations shall be subject to sanctions under Section 17 of Act 690 of 1993 [A.C.A. §17-42-312].

## **8.5 Fidelity and honest dealing.**

(a) In accepting employment as an agent, a licensee pledges to protect and promote the interests of the client or clients. This obligation of absolute fidelity to the interest of the client or clients is primary, but does not relieve a licensee from the equally binding obligation of dealing honestly with all parties to the transaction.

(b) A licensee shall not offer or advertise property without authority and in any offering or advertisement the price quoted must not be other than that agreed upon with the owners as the offering price.

(c) When acting as agent in the sale or management of property, a licensee shall not accept any commission, rebate, profit, payment, compensation or other valuable consideration from any source in connection with the property without full written disclosure to the party represented by the licensee.

(d) A licensee shall not accept compensation from more than one party without full written disclosure to all parties to the transaction.

## **SECTION 9. COMPLAINTS; INVESTIGATIONS; HEARINGS.**

### **9.1 Complaints.**

Complaints against licensees must be in writing, signed by the complainant under oath, dated and filed with the director.

### **9.2 Answers.**

(a) If the director determines that a complaint establishes a prima facie case of a violation of the Arkansas Real Estate License Law or Commission regulations, the director shall send a copy of such complaint to the licensee complained against along with instructions concerning the filing of an answer. The director may also send a copy of the complaint to the principal broker of the licensee complained against.

(b) Within twenty (20) days after service of the complaint on the licensee, such licensee shall file a written answer with the director. The answer shall be dated and shall be signed by the licensee under oath. The time for answering may be extended at the discretion of the director or the director's designee.

### **9.3 Investigation.**

The director may conduct such investigation as is deemed warranted either before or after the answer is received, and in conducting such investigation, may take statements from any person thought to have any knowledge of the facts or allegations pertaining to the complaint and may also obtain and review any documents which may relate to the complaint. The director may utilize the subpoena powers of the Commission in connection with the investigation.

### **9.4 Disposition of complaints; appeals from dismissal.**

(a) A complaint which, together with the answer, if any, and the results of any investigation conducted by the director, establishes a prima facie violation of the Arkansas Real Estate License Law or Commission regulations shall be presented to and reasonably disposed of by the Commission. Likewise, any investigation initiated and conducted by the director without a formal complaint which results in a

determination by the director that there exists a prima facie violation of the Arkansas Real Estate License Law or Commission regulations shall also be presented to and reasonably disposed of by the Commission.

(b) (1) Any person whose complaint is dismissed by the director without a hearing may appeal such dismissal to the Commission in the following manner:

(i) The request for appeal must be in writing and received in the offices of the Commission not later than sixty (60) days following the date of dismissal by the director; and

(ii) The request for appeal must be accompanied by the appeal filing fee; and

(iii) The Commission staff shall determine the cost of preparing the record for the Commission's review, which cost shall be paid by the appellant within thirty (30) days after notification of the amount; otherwise the appeal will be dismissed.

(2) Upon submission of the appeal, the Commission shall review the written record and either uphold or overrule the director's decision. The parties may submit written arguments but no new evidence. Any newly discovered evidence must first be presented to the director. If the decision is overruled, the Commission may either order a hearing or request further investigation or documentation of the complaint. If the Commission review results in a hearing being ordered on the complaint, both the filing fee and the cost of preparing the record shall be refunded to the appellant.

(3) Provided, however, that a person may not appear before the Commission in connection with any matter pending before the Commission for administrative adjudication except upon notice and opportunity for all parties to participate.

## **9.5 Hearings.**

(a) Hearings shall be scheduled for a day certain by the director who shall, at least thirty (30) days prior to such hearing date, send notice to all persons entitled to notice thereof of the place and approximate time of said hearing, a statement of the allegations and charges forming the basis for the hearing, and the provisions of the law or regulations thought to be involved therein. The Commission shall serve notice of said hearing by mailing same addressed to the licensee at his or her address last known to the Commission or may, in its discretion, serve the licensee by personal delivery of said notice.

(b) Prior to the hearing, the respondent licensee involved in the hearing may, by written petition, signed and dated, invoke the aid of the Commission in the procurement of any witness or document the licensee may desire to be present at such hearing, provided however, that such petition must be filed with the director at least ten (10) days prior to the hearing date.

(c) All motions concerning or related to the hearing must be in writing and filed at the Commission office no later than ten (10) days before the scheduled hearing date, along with a certificate of the person filing the motion that copies of the motion have been served on the attorney of the other parties who are represented by attorneys, or on the parties themselves if they are not represented by attorneys. Motion for continuance shall be decided by the director. All other motions shall be decided by the Commission or by the hearing officer by delegation of such responsibility by the Commission. Upon delegation and authorization from the Commission, the hearing officer may also conduct pre-hearing conferences.

## **9.6 Hearing procedure.**

(a) At the hearing, the Commissioners shall hear and decide the ultimate issues of both fact and law.

(b) The Commission's hearing officer shall preside over the hearing and regulate procedural aspects of the hearing, including ruling on admissibility of evidence and objections. The hearing officer shall advise the Commission on questions of law.

(c) All persons appearing before the Commission and giving testimony shall first be placed under oath. All testimony given shall be recorded and shall be a part of the record in the case.

(d) At any hearing both the respondent licensee and complainant may be present in the hearing room during the entire hearing and the respondent licensee shall have the right to cross-examine any witness and to examine any document or evidence submitted.

(e) The hearing shall begin with presentation of the case against the respondent licensee. Such presentation is ordinarily conducted by the Commission staff counsel. However, upon request, and at the discretion of the Commission, counsel for the complainant may be permitted to participate. At the conclusion of such presentation, the respondent licensee may present evidence in defense of the charges, following which rebuttal testimony and evidence may be offered. Closing arguments may be called for or dispensed with at the discretion of the Commission.

(f) The Commission may receive into evidence such affidavits, depositions, certified copies of documents, photocopies of official records and other exhibits as it deems appropriate, whether or not such documents are admissible under formal rules of evidence, together with such other evidence as may be admissible by law. The Commission shall give to such evidence such weight as the Commission shall determine appropriate under the circumstances.

(g) After presentation of all evidence the Commission shall deliberate on the issues and either announce its decision or take the matter under advisement for later decision.

(h) Upon reaching a decision, the Commission shall enter its findings of fact and conclusions of law, and an appropriate order shall be prepared and served on the parties.

(i) Once the decision is made, any motion for reconsideration must be filed within fifteen (15) days from the date the decision is first announced, whether orally or in writing, but the filing and pendency of such motion will not delay the appeal time dead-lines of the Arkansas Administrative Procedure Act.

## **9.7 Service.**

Service of any notice, order or other document or instrument upon any person shall be complete upon mailing to such person, postage prepaid, in a sealed envelope via the United States Postal Service.

## **9.8 Attorneys.**

An attorney who has entered an appearance in any cause before the Commission shall not withdraw except by leave of the Commission after notice served upon the attorney's client, counsel for the other parties and counsel for the Commission staff.

## **SECTION 10. BROKER RESPONSIBILITIES; ETHICAL REQUIREMENTS; TRUST FUNDS AND ACCOUNTS; LISTING AND OFFER AND ACCEPTANCE AGREEMENTS; CRIMINAL CONVICTIONS.**

### **10.1 Dealing independently of principal broker.**

(a) If a principal broker or executive broker learns a salesperson, associate broker or executive broker licensed under such principal broker or executive broker has, without permission of the principal broker or executive broker, engaged in real estate activities independently or through some other broker, it is the duty of the principal broker or executive broker to immediately notify the Commission in writing and forward such licensee's license to the Commission.

(b) Any salesperson, associate broker or executive broker who engages in real estate activities independently or through some other broker without permission from the principal broker or executive broker shall be presumed to be in violation of A.C.A. § 17-42-311 and subject to appropriate sanctions.

### **10.2 Expiration date for agency agreements or contracts.**

A licensee shall put a specific determinable duration or a specific expiration date on all written agency agreements or contracts or any extensions thereof. (Examples: Listing and Buyer Representation Agreements or Contracts)

### **10.3 Membership in trade organization.**

A licensee shall not use terms such as REALTOR®, REALTIST or any other trade name or insignia of membership of any real estate organization of which the licensee is not a member.

### **10.4 Broker responsibilities; executive brokers; part-time brokers.**

(a) (1) A principal broker is generally responsible for all business conducted by the broker's firm and for all of the real estate activities of all of those licensed under or associated with the principal broker, unless the licensee conducted real estate business independently and without permission or authority from the principal broker. If the principal broker learns that a licensee is conducting business independently, that principal broker must comply with Commission Regulation 10.1(a). (Amended 1/1/2010)

(2) For each executive broker so designated, the principal broker must complete and file with the Commission an appropriate designation form signed by both the principal broker and the designated executive broker. The designation of an executive broker is effective when filed with the Commission.

(3) Designation of one or more executive brokers does not absolve the principal broker of general responsibility for the conduct of all real estate business conducted by the principal broker's firm, and the principal broker is specifically responsible for the activities of all executive brokers.

(b) Principal brokers and executive brokers have the duty and responsibility to instruct those brokers and salespersons licensed under them with regard to the fundamentals of real estate practice and the ethics of the profession, and to keep them informed and abreast of all changes and developments pertaining to the Arkansas Real Estate License Law and Commission regulations. They shall also exercise strict supervision of the real estate activities of all those licensed under them and for whom they have supervisory responsibility.

(c) Whether or not a principal broker or executive broker has discharged these responsibilities for those licensed under him/her will depend on various factors and circumstances, including, without limitation, the following:

- (1) Frequency and manner of contact and communication;
- (2) Type and frequency of educational and instructional activities;
- (3) Method and frequency of monitoring real estate activities.

(d) (1) The preparation of instruments in connection with a real estate rental or sale and the closing of a sale by a licensee must be performed by or under the specific supervision of the principal broker.

(2) If the principal broker or designated executive broker or their assigned licensee, closes a transaction or selects a third party to close the transaction, it is the responsibility of the principal broker or designated executive broker to ensure that the real estate closing conducted on behalf of the principal broker's or designated executive broker's client(s) is conducted in accordance with the agreement of the buyer and seller. If the buyer and/or seller selects a third party to close the transaction the principal broker or designated executive broker, or their assigned licensee, must provide written closing instructions, on behalf of their client(s), to the third party closing the transaction, and review the client's closing statement, if reasonably available, to insure that the closing is conducted in accordance with the agreement of their client. It is strongly recommended that the principal broker, designated executive broker, or assigned licensee advise the client to contact the closing agent or title insurer about the availability of closing protection.

(e) No broker who is gainfully employed, or who is engaged in a non-real estate related field, may employ any licensee to work under the broker's license issued to such broker. A broker who is employed or who is engaged in any field other than real estate will be presumed to be gainfully employed or engaged in a non-real estate related field. This presumption may be overcome by proof that such employment or engagement is (1) in a real estate related field, and (2) conducted in the same office as the broker's real estate business.

## **10.5 Advertising.**

(a) A licensee may not advertise any property, including the licensee's own property, for sale or rent, or display a real estate sign without including in that advertisement or sign the name of the firm with whom that licensee is licensed.

(b) A principal broker and any persons licensed with said principal broker shall not advertise or otherwise conduct real estate brokerage business under any name other than the name in which the principal broker's license has been issued.

(c) In public advertising a principal broker shall be especially careful to present a true picture and should not permit licensees to use individual names or telephone numbers, unless the licensee's connection with the broker is obvious in the advertisement.

## **10.6 Knowledge of property.**

A licensee shall exert reasonable efforts to ascertain those facts which are material to the value or desirability of every property for which the licensee accepts the agency, so that in offering the property

the licensee will be informed about its condition and thus able to avoid intentional or negligent misrepresentation to the public concerning such property.

#### **10.7 Handling of funds; maintenance of records.**

(a) (1) A licensee shall immediately deliver to the principal broker any money or other consideration received in connection with a real estate transaction which belongs to others, such as escrow or trust funds, clients' moneys, earnest moneys, rents, advance fees, deposits, etc.

(2) A broker shall deposit all advance fees in the broker's trust account and shall disburse such funds only in accordance with the terms of a written agreement signed by the owner of the funds. If such written agreement is not received within a reasonable time after payment of the advance fee, the fee shall be refunded to the owner.

(3) "Advance fee" means any fee charged for services to be paid in advance of the rendering of such services, including, without limitation, any fee charged for listing, advertising, or offering for sale or lease any real property.

(b) (1) Each principal broker shall maintain complete records of all real estate business handled by that firm. Separate files for each real estate transaction conducted by the firm shall be maintained and shall contain signed copies of any of the following documents which were prepared in connection with the transaction: (i) listing contract, (ii) agency contract, (iii) offers, (iv) offer and acceptance contracts and (v) closing statements, along with any additional documents as may be necessary to make a complete record of each transaction.

(2) Each principal broker shall maintain complete records pertaining to property managed for others. Such records shall include all contracts, financial transactions, receipts, statements, repair estimates and other documents relating to management of the property.

(3) All records required by Regulation 10.7 shall be maintained by the principal broker for three (3) years or such time as may be required by law, whichever is greater, and shall be open to inspection by and made available to the investigative staff of the Commission at the firm's office or other location designated by the Commission. All records required by Regulation 10.7 may be maintained in an electronic form provided that a copy of the records can be produced as required by this Regulation.

(c) When a real estate firm ceases to do business and to maintain an office, the last principal broker remaining with the firm shall be responsible for all records of the firm, including the firm's real estate trust account and transaction records, and at the time the real estate firm's office is closed, the principal broker shall immediately notify the Commission of the address and phone number of the place where those records are being maintained. If for any reason that broker delivers custody or responsibility for those records to another person or firm, he/she shall immediately notify the Commission of such transfer and furnish the name, address and phone number of such person or firm.

#### **10.8 Trust funds; trust accounts.**

(a) "Trust funds" means and includes money or other things of value not belonging to the principal broker but which are received by the principal broker or any of the principal broker's licensees in connection with a real estate transaction or real estate activity, including, without

limitation, clients' moneys, earnest moneys, rents, advance fees, deposits, etc. For purposes of the Arkansas Real Estate License Law and Commission regulations, any funds deposited in a broker's trust account are presumed to be trust funds.

(b) Except as provided in Regulation 10.8(d), a principal broker shall not commingle trust funds with personal funds or other non-trust funds and shall not deposit or maintain trust funds in a personal account or any kind of business account except a specifically designated trust account.

(c) A principal broker who receives trust funds shall either maintain a separate trust account or shall have an escrow agent for all such trust funds. The principal broker of the firm shall be solely responsible and accountable for all trust funds received by the firm and all deposits to or disbursements from the trust account. The principal broker shall also be responsible and accountable for any funds delivered to an escrow agent selected by the principal broker, but shall not be responsible for funds delivered to an escrow agent selected by the parties. Except as authorized by Regulations 10.8(i) and 12.2, the trust account shall be non-interest bearing. The name on the account shall include either "trust" or "escrow" and must be located in an institution insured by either the FDIC or some other insuring agency of the federal government.

(d) A principal broker may maintain the broker's own funds in a designated trust account only when they are clearly identified as the broker's deposit and only for the following purposes:

(1) If the bank in which the account is maintained designates a specific minimum balance that must be maintained in order to keep the account open, the broker may maintain that amount in the account designated as the broker's funds.

(2) If the bank in which the account is maintained requires a service charge to be paid for the account, the broker may maintain a reasonable amount to cover that service charge in the account in the broker's name, provided, however, that such amount shall not exceed the total of six (6) months service charges.

(e) With regard to each separate trust account, the principal broker shall submit to the Commission in writing the following:

- (1) Name and number of the account.
- (2) Name and address of the bank.
- (3) Date the account was opened.

The principal broker shall keep the Commission informed at all times of the foregoing details of each separate trust account.

(f) In addition to the requirements of Regulation 10.8(e), the principal broker shall submit the same information in writing immediately upon any of the following events or occurrences:

- (1) Commission approval of real estate firm name.
- (2) Change of real estate firm name.
- (3) Designation of new principal broker.
- (4) The account is changed in any respect or closed.

(g) (1) No later than three (3) days following the execution of a real estate contract by both seller and buyer, all trust funds delivered to the principal broker, shall be either deposited in the trust account, delivered to an escrow agent, or deposited pursuant to a written agreement by the seller and buyer. All other funds delivered to the broker pending performance of any act shall be, no later than three (3) days, either deposited in the trust account, delivered to an escrow agent, or deposited pursuant to a written agreement by the seller and buyer. Should the third (3<sup>rd</sup>) day be a Saturday, Sunday, or legal holiday, then the third (3<sup>rd</sup>) day is extended to the next day which is not a Saturday, Sunday, or legal holiday. The broker shall maintain an accounting of all funds delivered to the broker and shall keep a signed receipt for any funds the broker delivers to an



escrow agent. The broker remains responsible for the funds if the broker selected the escrow agent, but not if the parties selected the escrow agent. A broker shall at all times keep detailed records of all funds coming into the broker's possession and all disbursements made by the broker.

(2) All trust account bank statements shall be reconciled in writing at least monthly and balanced to the total amount of trust funds deposited in the account which have not been disbursed. Copies of such reconciliations shall be kept by the broker for at least three (3) years or for such time as may be required by law, whichever is greater.

(3) All trust fund records, including bank reconciliations, shall be open to inspection by and made available to the investigative staff of the Commission at the firm's office or other location designated by the Commission.

(h) (1) All security deposits made under a rental or lease agreement shall be deposited in the principal broker's trust account, including those deposits made on property owned by any licensee licensed under the principal broker unless the licensee who owns the property has a written agreement with the tenant providing that the licensee may keep the security deposit in the licensee's separate account. A copy of any such agreement shall be furnished to the principal broker by the licensee.

(2) Provided, however, that a principal broker shall not be responsible for the failure of those licensed under such principal broker to comply with Regulation 10.8(h)(1) as long as the principal broker is in compliance with Regulation 10.4.

(i) Nothing in this Regulation 10.8 shall be deemed to prohibit a broker from maintaining certain funds or deposits in particular transactions in an interest-bearing account when required to do so by law or valid regulation of any governmental agency, nor shall it prohibit a broker from maintaining an interest-bearing account while participating in the Interest on Real Estate Brokers' Trust Account program authorized by Section 24 of Act 690 of 1993 [A.C.A. §17-42-601 et seq.] and Regulations 12.1 and 12.2.

## **10.9 Disbursement of trust funds.**

(a) A principal broker shall not disburse trust funds from the broker's designated trust account contrary to the terms of a contract for the sale or rental of real estate, or other contract pursuant to which the funds were received, and a principal broker shall not fail to disburse trust funds according to the terms of such contract.

(b) Except as otherwise authorized by Regulation 10.8(d), the balance of a principal broker's trust account shall at all times equal the total of the trust funds received for which the broker is accountable.

(c) A principal broker who disburses trust funds from a designated trust account under the following circumstances shall be deemed by the Commission to have fulfilled properly the broker's duty to account for and remit money which the broker is required to maintain and deposit in a designated trust account:

- (1) upon the rejection of an offer to buy, sell, rent, lease, exchange, or option real estate;
- (2) upon the withdrawal of an offer not yet accepted to buy, sell, rent, lease, exchange, or option real estate;
- (3) at the closing of the transaction;
- (4) upon securing a written agreement which is signed by all parties having an interest in the trust funds and is separate from the contract which directs the broker to hold the funds;
- (5) upon the filing of an interpleader action in a court of competent jurisdiction;

- (6) upon the order of a court of competent jurisdiction; or
- (7) upon a reasonable interpretation of the contract which directed the broker to deposit the funds.
- (d) When a broker makes a disbursement to which all parties to the contract have not expressly agreed in writing, the broker must immediately notify all parties in writing of the disbursement.

#### **10.10 Agreements to be written.**

(a) Except as provided in Regulation 10.10(b), a licensee, for the protection of the public and of all parties with whom the licensee deals, shall see that the exact agreement of the parties regarding real estate is in writing. A licensee shall also see that clients and other parties to the transaction with whom the licensee deals receive copies of such agreements signed by all parties. (Examples: Exclusive agency agreements or contracts, real estate contracts, closing statements, lease agreements, management agreements, financial obligations and commitments, etc.) It is strongly recommended that a licensee obtain written acknowledgment from the buyer and or seller that the buyer and or seller have received said signed copies.

(b) It is strongly recommended that non-exclusive agency agreements or contracts be in writing.

(c) In compliance with the Arkansas Supreme Court decision in the case of Pope County Bar Association, Inc. vs. Suggs, 624 S.W. 2d 828 (1981), real estate forms used by licensees in the regular course of business shall be approved by a licensed Arkansas attorney prior to use. The licensee shall be responsible for providing evidence of such approval by a licensed Arkansas attorney upon request of the Commission.

#### **10.11 Self dealing.**

Licensees shall not buy, sell, rent or lease property for themselves or for a corporation, partnership or association in which they have an interest without first making full disclosure to the buyer or seller, as the case may be, of the exact facts that they are licensed as a real estate broker or salesperson and are buying, renting or leasing the property for their own account or have an interest in the property which they are selling, renting or leasing. All such disclosures must be made in writing before the sales, rental or lease contract is entered into.

#### **10.12 Offers and acceptances.**

(a) All offers received on a specific property shall promptly be presented to the seller by the listing firm or other licensee designated by an authorized representative of the listing firm.

(b) Every offer received must be signed by the licensee who receives it and by that licensee's supervising broker. Every acceptance must be signed by the listing licensee and that licensee's supervising broker. (It is desirable for the supervising brokers of the selling licensee and listing licensee to review and sign each real estate contract before it is submitted to the seller, although that is not always possible. However, such supervising brokers shall review and sign the real estate contract as soon as possible after it is received, and, in all cases, prior to closing.)

#### **10.13 Listing agreements; signs.**

(a) If a firm holds an exclusive listing contract on a parcel of property, the selling licensee shall not contact the seller about showing the property or negotiating the sale without prior permission from the listing firm or other licensee designated by an authorized representative of the listing firm. Any offers received by the selling licensee shall be presented to the firm holding the exclusive listing contract not later than the close of the next business day after receipt of the offer. Likewise, all earnest moneys and deposits shall be forwarded to the listing firm for deposit in the listing firm's trust account. The listing firm or other licensee designated by an authorized representative of the listing firm shall then present the offer to the seller. The selling licensee may accompany the listing licensee with the latter's permission, but shall not contact the seller without prior permission from an authorized representative of the listing firm.

(b) A licensee shall not knowingly enter into an agency agreement or contract when there is reason to believe that there is an existing exclusive agency agreement or contract in force without first communicating with the other principal broker who holds such agreement or contract to confirm its existence. If there is an existing exclusive agency agreement or contract in force, the licensee shall not enter into another agency agreement or contract without first notifying the client in writing to consult with an attorney regarding the risk of being liable for two (2) separate commissions. (Examples: Exclusive Listing and Exclusive Buyer Representation Agreements or Contracts, Property Management Agreements)

(c) Signs offering or advertising a property may be on the property only during the existence of a listing agreement, unless otherwise authorized by the owner.

#### **10.14 Reporting violations.**

It is the duty of each licensee to report in writing to the Commission any information coming to the licensee's knowledge which is or may be (1) a violation of the Arkansas Real Estate License Law; or (2) a violation of the Commission regulations.

#### **10.15 Out of state property.**

(Repealed 8/31/2007)

#### **10.16 Criminal convictions and disciplinary actions.**

(a) A licensee who is convicted of or pleads guilty or nolo contendere to any crime other than a traffic violation shall make written report thereof to the Commission within thirty (30) days after the conviction or plea. The report shall include the date of the offense and of the conviction or plea, the name and address of the court, the specific crime for which convicted, or to which the plea is entered, the fine, penalty and/or other sanctions imposed, and copies of the charging document and judgment of conviction or other disposition, including probation or suspension of sentence. The report shall also include the licensee's explanation of the circumstances which led to the charge and conviction or plea, along with any other information which the licensee wishes to submit.

(b) A licensee who after the initiation of an investigation, hearing or other administrative action surrenders or who has a professional, vocational or occupational license, permit, certification or registration denied, revoked, suspended or canceled or who is subjected to any sanctions, including probation, involving such license, permit, certification or registration shall make written report thereof to the Commission within thirty (30) days after such action. The report shall include the date of the action, the name and address of the regulatory agency which has taken the action and copies of documents

pertaining thereto. The report shall also include the licensee's explanation of the circumstances which led to the action, along with any additional information the licensee wishes to submit.

(c) An applicant for a real estate license who has been convicted of or pleaded guilty or nolo contendere to any crime other than a traffic violation or who after the initiation of an investigation, hearing or other administrative action has surrendered or has had a professional, vocational or occupational license, permit, certification or registration denied, revoked, suspended or canceled or who has been subjected to any sanctions, including probation, involving such a license, permit, certification or registration shall furnish the written report referred to in Regulation 10.16 (a) and/or (b) to the Commission at the time the application is submitted if such action has already occurred, otherwise such report shall be made immediately after the action occurs.

### **10.17 Violation of law or regulation.**

A licensee who violates or fails to comply with any provision of the Arkansas Real Estate License Law or Commission regulations is subject to sanctions under Section 17 of Act 690 of 1993 [A.C.A. §17-42-312].

## **SECTION 11. CONTINUING EDUCATION.**

### **11.1 Requests for waiver or extension.**

Each request for a waiver of the continuing education requirement under A.C.A. § 17-42-501(b) or extension of time to complete post license education requirement, shall be in writing and shall be supported by clear and convincing evidence. The Commission shall acknowledge each such request and shall announce its decision in writing. If the waiver or extension is granted, the Commission may impose such terms and conditions as it deems appropriate.

### **11.2 Renewal of expired license.**

A person who applies to renew an expired license under Section 13 of Act 690 of 1993 [A.C.A. §17-42-307(b)] will be considered to be in the same status as a person holding an inactive license.

### **11.3 Approved courses and instructors.**

Only those courses and instructors which are approved by the State Board of Private Career Education or which are exempted from such approval by Section 23(4) of Act 690 of 1993 [A.C.A. §17-42-504] shall be accepted by the Commission for continuing education credit.

### **11.4 No duplication of pre-licensing and continuing education credit.**

No educational courses or hours submitted as credit toward the prelicensing education requirement shall be used as credit for the continuing education requirements, and no educational courses or hours

submitted for credit toward the continuing education requirements shall be used or counted to satisfy the pre-licensure educational requirements.

### **11.5 Post-license education requirements**

(a) Each salesperson and broker who is initially licensed in that capacity after January 1, 2002 will complete a post-license education course as provided herein.

(b) Salespersons shall complete an eighteen (18) classroom hour salesperson course.

(c) Brokers shall complete a thirty (30) classroom hour broker course. Provided, however, a broker who completed the salesperson post-license education course within thirty-six (36) months immediately preceding the date of his initial broker license, shall be credited with the eighteen (18) hour salesperson post-license course upon submission of proof of completion. Upon approval by the Commission said broker will only be required to complete twelve (12) hours in the broker course which are on subjects not covered in the salesperson course.

(d) All post-license education courses shall be conducted by either the Arkansas Real Estate Commission, a school or organization licensed by the State Board of Private Career Education, or post-secondary school accredited by a nationally recognized accrediting agency approved by the U.S. Department of Education wherever situated. All post-license education hours shall be conducted by actual classroom attendance.

(e) The Arkansas Real Estate Commission will establish the course content for the post-license education courses for new salespersons and brokers.

(f) The broker or salesperson shall deliver to the Commission the original certificate of completion of the post-license education course, or a copy thereof, from an approved provider, or other documentation satisfactory to the Commission. Said documentation must be received by the Commission no later than the end of the month one (1) year following the date of the broker's or salesperson's initial license. If documentation of an individual's post-license education is not received by the Commission within said time period, the license will be placed on inactive status until the broker or salesperson files satisfactory documentation of his completion of said post-license education course.

(g) A broker who is initially licensed in that capacity after January 1, 2002 cannot become an executive broker or principal broker until such broker has completed and filed satisfactory documentation of his completion of the post-license broker education course.

## **SECTION 12. INTEREST ON TRUST ACCOUNTS.**

### **12.1 Interest on trust account program.**

The Interest on Real Estate Brokers' Trust Account Program authorized by Section 24 of Act 690 of 1993 [A.C.A. §17-42-601 et seq.] is hereby established and Arkansas Real Estate Foundation, Inc. is designated as the recipient of funds generated by such program.

### **12.2 Certain interest bearing trust accounts approved.**

Notwithstanding any other Commission regulation to the contrary, a principal broker is authorized to maintain interest bearing trust accounts when required to do so by law or valid regulation of any governmental agency, or while participating in the Interest on Real Estate Brokers' Trust Account Program.

## **SECTION 13. TIME-SHARE.**

### **13.1 Registration; renewal.**

Each application for a time-share program shall be made on a form furnished by the Arkansas Real Estate Commission and shall be accompanied by a filing fee of three hundred dollars (\$300) plus five dollars (\$5) for each twenty-five (25) time-share intervals or portions thereof, provided however, the filing fee shall not exceed the sum of five hundred dollars (\$500).

Each registration shall be renewed annually pursuant to Ark. Code Ann. §§ 18-14-204(e) and 18-14-206(b) and shall be filed no later than July 1. Such renewal shall be made on a form prescribed by the Commission and accompanied by a fee of one-half (1/2) the amount of the original filing fee.

### **13.2 Agents; amendment of registration.**

(a) Each developer shall file with the Commission the name, street address, mailing address, and telephone number of each acquisition agent, managing agent, sales agent and exchange agent and the responsible managing employee for each of said agents associated with each time-share program. Should any of the information contained in this list change, then the developer shall notify the Commission of such change within two (2) weeks of such change.

(b) A developer shall amend or supplement its registration to report any material change in the information required by Ark. Code Ann. § 18-14-204. Such amendment or supplementation shall be made within forty-five (45) days of the occurrence of the material change. "Material change" means any change which alters the meaning or effect of an instrument or information, or any change which affects the rights or liabilities of any time-share owner or any potential time-share purchaser.

### **13.3 Fictitious name.**

Each developer, acquisition agent, managing agent, sales agent and exchange agent shall register with the Commission each fictitious name, if any, under which that person conducts business. No person shall conduct business which is regulated by the provisions of the Arkansas Time-Share Law under any names other than those registered with the Commission.

### **13.4 Purchase contract; cancellation notice; form, time, procedure.**

(a) A purchaser may cancel any contract for the purchase of a time-share interval from a developer within five (5) days after execution of the contract. The purchaser's right to cancel a contract for purchase shall not be waived.

(b) The public offering statement shall be written in clear, plain and concise language. There shall be attached to the front of the public offering statement a notice in duplicate containing the following language in at least 10 point boldface type:

**"IMPORTANT NOTICE**

**I UNDERSTAND THAT IF I SIGN A CONTRACT FOR THE PURCHASE OF A TIME-SHARE INTERVAL I HAVE THE RIGHT TO CANCEL THE CONTRACT WITHIN FIVE (5) DAYS AFTER SIGNING THE CONTRACT. I UNDERSTAND THAT CANCELLATION IS WITHOUT PENALTY AND ALL PAYMENTS MADE BY ME BEFORE CANCELLATION SHOULD BE REFUNDED WITHIN THIRTY (30) DAYS OF RECEIPT OF THE NOTICE OF CANCELLATION. IF THE FIFTH DAY AFTER THE SIGNING OF THIS CONTRACT IS A SATURDAY, SUNDAY, OR LEGAL HOLIDAY MY RIGHT TO CANCEL IS EXTENDED TO THE NEXT DAY WHICH IS NOT A SATURDAY, SUNDAY, OR LEGAL HOLIDAY.**

**I REALIZE THAT TO CANCEL THIS CONTRACT I MUST MAIL OR DELIVER A WRITTEN NOTICE OF CANCELLATION TO (NAME OF DEVELOPER) AT (DEVELOPER'S ADDRESS).**

**I UNDERSTAND THAT THE ARKANSAS REAL ESTATE COMMISSION NEITHER RECOMMENDS NOR APPROVES THIS OR ANY OTHER TIMESHARE PROGRAM.**

**I HEREBY ACKNOWLEDGE RECEIPT OF THE ATTACHED PUBLIC OFFERING STATEMENT.**

**(Purchaser's Signature)**

**DATE: \_\_\_\_\_"**

The original executed notice shall be retained by the developer and the duplicate copy shall be given to the purchaser. This notice shall contain no other printing or writing thereon.

(c) There shall be included in each contract for the purchase of a time-share interval immediately above the signature line a notice containing the following language in print size larger than the other provisions of the contract (excluding descriptive headings and titles) but no less than 10 point boldface type:

**"NOTICE TO PURCHASER**

**YOU HAVE THE RIGHT TO CANCEL THIS CONTRACT WITHIN FIVE (5) DAYS AFTER YOU SIGN THE CONTRACT. FOR FURTHER INFORMATION, SEE "IMPORTANT NOTICE" ATTACHED TO THE PUBLIC OFFERING STATEMENT."**

(d) Should the fifth day after the execution of the contract for purchase of a time-share interval be a Saturday, Sunday or legal holiday, then the five (5) day cancellation period shall not expire until the end of the next day which is not a Saturday, Sunday or legal holiday. "Legal holiday" means any day designated as a holiday by the President or the Congress of the United States or designated by the laws of this state.

Notice of cancellation shall be properly addressed with sufficient postage prepaid to assure delivery and notice shall be deemed given when postmarked by the United States Postal Service.

**13.5 Record maintenance.**

Each developer shall assure that any records required to be maintained pursuant to the Arkansas Time-Share Law or regulations promulgated thereunder shall be maintained and made available to the Arkansas Real Estate Commission upon request.

### **13.6 Records; developer and agent; type, time.**

(a) Each developer shall maintain complete records of each sale of any time-share intervals in the time-share project. The records shall be maintained for three (3) years and shall contain complete and detailed records of all escrow accounts required by statute or otherwise maintained; complete records of each sale of any time-share intervals, including copies of sales contracts, closing statements, credit disclosure information, executed copies of "Important Notice;" and any other information necessary to make a complete record of each transaction effected by the developer. These records shall be open to inspection by the Arkansas Real Estate Commission.

(b) Each sales agent functioning as a supervising broker pursuant to the Real Estate License Law shall maintain complete records of each transaction conducted by his/her firm. Each firm shall maintain signed copies of all offers, signed copies of all closing statements, detailed records of all escrow accounts required by statute or otherwise maintained, and any additional documents as may be necessary to make a complete record of each transaction effected by such firm. All such records shall be maintained for three (3) years and shall be open to inspection by the Arkansas Real Estate Commission.

(c) Each acquisition agent shall maintain complete records of all advertising and/or promotional materials used, names and addresses of all persons who receive prizes, other than the names and addresses of persons who received the prize most frequently awarded, the retail value of all prizes awarded and a statement of the odds of winning each prize. These records shall be maintained for three (3) years following the expiration date of the contest or gift offer and shall be open to inspection by the Arkansas Real Estate Commission.

(d) Each managing agent shall maintain complete records of all time-share programs managed by his/her firm. Each firm shall maintain complete and detailed records of all maintenance fees collected and the disbursement of these fees for repair and maintenance of the units. These records shall include copies of all contracts, agreements, receipts and invoices, and any additional documents as may be necessary to make a complete record of all financial transactions with regard to the management of each unit. Each firm shall also maintain complete records of any rental program operated for the benefit of interval owners. These records shall be maintained for three (3) years and shall be open to inspection by the Arkansas Real Estate Commission.

### **13.7 Advertising materials; filing, time.**

Advertising materials required to be submitted to the Commission under Ark. Code Ann. § 18-14-501 shall not be used in this state until either ten (10) days after such material has been received by the Commission or such earlier date as the Commission may determine in writing. Each separate filing of advertising materials shall be accompanied by a filing fee of ten dollars (\$10.00).

### **13.8 Financial statements.**



Financial statements required to be submitted to the Commission under Ark. Code Ann. § 18-14-204(a) shall be certified by a certified public accountant or a registered public accountant who shall state that in his/her opinion the financial statement presents fairly the financial position of the entity for which the certification is rendered. The accountant shall state that he/she has examined the entity's financial statement, that the examination was made in accordance with generally accepted auditing standards, and that the financial statement presents fairly the financial position of the entity in conformity with generally accepted accounting principles.

### **13.9 Promotional programs; prizes, odds.**

(a) At least ten (10) days prior to the initiation of any promotion, contest, sweepstakes or other prize or gift offer (hereinafter referred to as "promotional program") regarding a time-share development registered in Arkansas, the developer or acquisition agent or other principal party shall submit to the Commission a full and complete description of the promotional program, including but not limited to the following information:

- (1) The duration of the promotional program;
- (2) A description of each prize or gift to be awarded including the retail value of each prize or gift to be awarded and the minimum number of each prize to be awarded;
- (3) A copy of all advertising material to be used;
- (4) A statement of each condition precedent to the receipt of any gift or prize;
- (5) The formula used in computing the odds of winning each prize or category of prizes, if such odds are less than one to one.

(b) No change shall be made in any of the information submitted pursuant to Regulation 13.9(a)(1-5) without prior written approval of the Arkansas Real Estate Commission. The Commission shall determine within ten (10) days of receipt of the proposed change whether such change would constitute a material alteration to the promotional program and therefore constitute a new promotional program. "Material alteration" is any change in the odds of winning any prize or category of prizes; or any substantial change in the nature of the promotional program, value of prizes or gifts, length of the promotional program, or any other right or obligation of the participants in the promotional program. Should a proposed change constitute a new promotional program, the developer or acquisition agent or other principal party shall submit to the Commission a full and complete description of the promotional program under Regulation 13.9(a).

(c) Any representation of the odds of winning a prize or gift shall be stated in a straightforward and easily comprehensible manner in whole numbers without the use of decimal points or percentage signs.

- (d) All materials which advertise a promotional program shall prominently contain:
- (1) A disclosure of the odds of winning, if such odds are less than one to one;
  - (2) A disclosure that a "time-share" sales presentation will be offered or required;
  - (3) A disclosure of the qualifications necessary for participation in the promotional program;
  - (4) The description and retail value of the prize or gift; and
  - (5) If the promotional program involves the participation of other entities or developers, the disclosure that the promotional program has multiple sponsors and is either national, regional or statewide in scope, whichever is applicable.

(e) Within one (1) month of the conclusion of any prize offer in which the odds of receiving the prize are less than 1 to 1, the developer shall certify to the Commission the total number of offers made and the total number of winning numbers distributed by prize category.

(e) Within one (1) month of the conclusion of any contest, the developer shall provide to the Commission a list of the names and addresses of each person who received each prize, other than the prize most frequently awarded. The list shall identify the prize received by each person. The developer shall provide a copy of this list of winners to any person upon request.

### **13.10 "Reasonable Time" defined.**

"Reasonable time" as used in Ark. Code Ann. § 18-14-409(a) shall be presumed to be thirty (30) days.

### **13.11 Limitations.**

Should the parties agree to reduce the period of limitation as stated in Ark. Code Ann. § 18-14-403, such agreement to reduce shall be a separate and distinct paragraph of the contract and shall be initialed by the parties as though the paragraph were an alteration of the original agreement.

### **13.12 Reservation; deposit refundable.**

Upon receipt of a deposit and acceptance of a reservation pursuant to Ark. Code Ann. § 18-14-202(a), the developer shall notify the purchaser in writing that the deposit is refundable at any time at the purchaser's option and that the acceptance of the deposit does not create a binding obligation.

### **13.13 General regulations apply.**

Rules and Regulations of the Arkansas Real Estate Commission 1.1 through 12.2 inclusive shall regulate the practice and procedure for the Commission for enforcement of the Arkansas Time-Share Law and are hereby adopted and incorporated by reference as though included herein word for word; provided that, for purposes of the Arkansas Time-Share Law Regulations, reference to the real estate license law or Commission regulations, and/or reference to licensees, shall be deemed to include the Arkansas Time-Share Law and Time-Share Regulations; and reference to licensees shall be deemed to include registrants under the Arkansas Time-Share Law.

### **13.14 "No Action" letter.**

Whenever the Commission determines on the basis of the facts presented that no affirmative action is necessary to protect the public interest or prospective purchasers, a letter stating that no action will be taken by the Commission may be issued. Any letter by the Commission that action shall not be taken shall not bind the Commission with regard to its future actions relating to such matters unless the Commission shall specifically set forth in writing its determination to be so bound and the extent and nature thereof. Any such no-action letter shall not affect any right which any purchaser may have under the Arkansas Time-Share Law.

### **13.15 Effective date.**

The effective date of the Time-Share Regulations adopted herein [13.1 - 13.4] shall be the first day of the fourth month following adoption. [Adopted 11-27-84; effective 3-1-85.]

## **SECTION 14. EFFECTIVE DATE; PARTIAL REPEALER.**

#### **14.1 Effective date.**

The foregoing regulations numbered 1.1 through 12.2 shall become effective on January 1, 1994.

#### **14.2 Partial repealer.**

Previously enacted and currently existing regulations of the Commission numbered 101 through 159 and 201 through 205 are deemed superseded by these regulations 1.1 through 12.2 and are therefore repealed as of January 1, 1994 as to any acts, conduct, transactions or other matters which occur on or after January 1, 1994; provided, however, that any acts, conduct, transactions or other matters which occur prior to January 1, 1994, which become the subject of a complaint, hearing, action, or determination after January 1, 1994, shall be governed and controlled by Regulations 101 through 159 and 201 through 205.

### **SECTION 15. REAL ESTATE AUCTION DEFINITIONS AND REQUIREMENTS.**

#### **15.1 Definitions.**

(a) Auction means a method of selling real estate in a public forum through open and competitive bidding.

(b) Auctioneer means any individual who holds an active Arkansas Real Estate license pursuant to ACA § 17-42-101 et seq. [and an active Arkansas Auctioneer license pursuant to ACA § 17-17-101 et seq.], who offers, attempts, or agrees to auction real estate or participate in a real estate auction.

(c) Buyer's premium means an advertised percentage of the high bid or flat fee added to the high bid to determine the total contract price to be paid by the buyer.

(d) Absolute Auction means an auction where the real estate is sold to the highest qualified bidder with no minimum bid or limiting conditions. The seller may not bid personally or through an agent, unless the seller is a party to the dissolution of any marriage, limited liability company, partnership, or corporation, and is bidding as an individual apart from the selling entity. Also known as an auction without reserve.

(e) Auction With Reserve means an auction of real estate in which the seller or his agent reserves the right to establish a disclosed or undisclosed minimum bid, to accept or reject any and all bids, and to withdraw the real estate at any time prior to the completion of the sale by the auctioneer. Also known as reserve auction.

#### **15.2 Nature of auction.**

(a) Auction shall be with reserve, unless the real estate is offered without reserve using explicit terms such as "absolute" or "without reserve." In an auction "with reserve," the auctioneer may withdraw the real estate at any time until he/she announces completion of the auction. In an "absolute" auction or auction "without reserve," after the auctioneer calls for bids on real estate, that real estate cannot be withdrawn unless no bid is made within a reasonable time.

(b) The auctioneer shall have a written agreement with the owner stating the parties' agreement regarding the terms and conditions of the auction, including whether the auction will be an absolute auction or auction with reserve and the terms of reserve or conditions on the sale; whether a buyer's premium will be charged the buyer and who will receive the buyer's premium collected, and whether the auctioneer or others on the auctioneer's behalf may bid on or purchase the subject real estate at the auction.

### **15.3 Auctioneer/Seller bidding or purchasing auctioned real estate.**

(a) Auctioneer bidding.

The auctioneer shall not bid or otherwise purchase the real estate being auctioned, or permit others to do so on his behalf, unless he has disclosed that he may bid or may purchase the real estate as provided herein.

(b) Seller bidding.

(1) In an absolute auction, the auctioneer shall not knowingly permit the seller or others on the seller's behalf to bid on the seller's real estate being auctioned, unless the seller is a party to the dissolution of any marriage, limited liability company, partnership, or corporation, and is bidding as an individual apart from the selling entity and disclosure as required herein has been made to those in attendance at the auction.

(2) In a reserve auction, the auctioneer shall not knowingly permit the seller or others on the seller's behalf to bid on the seller's real estate being auctioned unless the auctioneer has disclosed that the seller or others on the seller's behalf may bid on the real estate being auctioned as provided herein.

(c) Notices.

Immediately prior to opening the bidding on the subject real estate, the auctioneer shall announce to all of those in attendance at the auction, the terms and conditions of the auction, and announce if the seller and/or auctioneer, or others on their behalf may bid on or purchase the real estate being auctioned.

## **Federal Fair Housing Law**

# **Summary Information**

## **Extracted From**

### **Federal Register**

**Vol. 54, No. 13**

### **“Implementation of the Fair Housing Amendments Act of 1988”**

## **U.S. Department of Housing and Urban Development Publication**

### **“Fair Housing - It’s Your Right”**

**(HUD Publication: HUD-1260-FHEO)**

## **Federal Fair Housing Laws**

Federal laws that are commonly referred to as “fair housing laws” consist of the:

- Civil Rights Act of 1866
- Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended in 1974 and 1988)
- 14th Amendment to the United States Constitution

## **The Fair Housing Act**

The Fair Housing Act prohibits discrimination in housing because of:

- Race or color
- National origin
- Religion
- Sex
- Familial status (including children under the age of 18 living with parents or legal custodians; pregnant women and people securing custody of children under 18)
- Handicap

## **What Housing Is Covered?**

The Fair Housing Act covers most housing. In some circumstances, the Act exempts owner-occupied buildings with no more than four units, single-family housing sold or rented without the use of a broker, and housing operated by organizations and private clubs that limit occupancy to members.

### **Discriminatory Housing Practices - What Is Prohibited?**

**In the Sale and Rental of Housing:** No one may take any of the following actions based on race, color, national origin, religion, sex, familial status or handicap:

- It shall be unlawful for a person to refuse to sell or rent a dwelling to a person who has made a bona fide offer, because of race, color, religion, sex, familial status, or national origin or to refuse to negotiate with a person for the sale or rental of a dwelling because of race, color, religion, sex, familial status, or national origin, or to discriminate against any person in the sale or rental of a dwelling because of handicap.

Prohibited actions include but are not limited to:

Failing to accept or consider a bona fide offer.

Refusing to sell or rent a dwelling to, or to negotiate for the sale or rental of a dwelling with any person.

Imposing different sales prices or rental charges for the sale or rental of a dwelling upon any person.

Using different qualification criteria or applications, or sale or rental standards or procedures, such as income standards, application requirements, application fees, credit analysis, or sale or rental approval procedures or other requirements.

Evicting tenants because of their race, color, religion, sex, handicap, familial status, or national origin or because of the race, color, religion, sex, handicap, familial status, or national origin of a tenant's guest.

- It shall be unlawful, because of race, color, religion, sex, handicap, familial status, or national origin, to impose different terms, conditions or privileges relating to the sale or rental of a dwelling or to deny or limit services or facilities in connection with the sale or rental of a dwelling.

Prohibited actions include but are not limited to:

Using different provisions in leases or contracts of sale, such as those relating to rental charges, security deposits and the terms of a lease and those relating to down payment and closing requirements.

Failing or delaying maintenance or repairs or sale or rental dwellings.

Failing to process an offer for the sale or rental of a dwelling or to communicate an offer accurately.

Limiting the use of privileges, services or facilities associated with a dwelling.

Denying or limiting services or facilities in connection with the sale or rental of a dwelling.

- It shall be unlawful, because of race, color, religion, sex, handicap, familial status, or national origin to restrict or attempt to restrict the choices of a person by word or conduct in connection with seeking, negotiating for, buying or renting a dwelling so as to perpetuate, or tend to perpetuate, segregated housing patterns, or to discourage or obstruct choices in a community, neighborhood or development.

Prohibited actions which are generally referred to as unlawful steering include but are not limited to:

Discouraging any person from inspecting, purchasing or renting a dwelling.

Discouraging the purchase or rental of a dwelling by exaggerating drawbacks or failing to inform any person of desirable features of a dwelling or of a community, neighborhood, or development.

Communicating to any prospective purchaser that he or she would not be comfortable or compatible with existing residents of a community, neighborhood or development.

Assigning any person to a particular section of a community, neighborhood or development, or to a particular floor of a building.

- It shall be unlawful, because of race, color, religion, sex, handicap, familial status, or national origin, to engage in any conduct relating to the provision of housing or of services and facilities in connection therewith that otherwise makes unavailable or denies dwellings to persons.

Prohibited actions relating to dwellings include but are not limited to:

Discharging or taking other adverse action against an employee, broker or agent because he or she refused to participate in a discriminatory housing practice.

Employing codes or other devices to segregate or reject applicants, purchasers or renters, refusing to take or to show listings of dwellings in certain areas because of race, color, religion, sex, handicap, familial status, or national origin, or refusing to deal with certain brokers or agents because they or one or more of their clients are of a particular race, color, religion, sex, handicap, familial status, or national origin.

Denying or delaying the processing of an application made by a purchaser or renter or refusing to approve such a person for occupancy in a cooperative or condominium dwelling.

Refusing to provide municipal services or property or hazard insurance for dwellings or providing such services or insurance differently.

- It shall be unlawful to make, print or publish, or cause to be made, printed or published, any notice, statement or advertisement with respect to the sale or rental of a dwelling which indicates any preference, limitation or discrimination because of race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation or discrimination.

Discriminatory notices, statements and advertisements include, but are not limited to:

Using words, phrases, photographs, illustrations, symbols or forms which convey that dwellings are available or not available to a particular group of persons.

Expressing to agents, brokers, employees, prospective sellers or renters or any other persons a preference for or limitation on any purchaser or renter.

Selecting media or locations for advertising the sale or rental of dwellings which deny particular segments of the housing market information about housing opportunities.

Refusing to publish advertising for the sale or rental of dwellings or requiring different charges or terms for such advertising.

- It shall be unlawful, because of race, color, religion, sex, handicap, familial status, or national origin, to provide inaccurate or untrue information about the availability of dwellings for sale or rental.

Prohibited actions include but are not limited to:

Indicating through words or conduct that a dwelling which is available for inspection, sale, or rental has been sold or rented.

Representing that covenants or other deed, trust or lease provisions which purport to restrict the sale or rental of dwellings because of race, color, religion, sex, handicap, familial status, or national origin preclude the sale or rental of a dwelling to a person.

Enforcing covenants or other deed, trust, or lease provisions which preclude the sale or rental of a dwelling to any person.

Limiting information, by word or conduct, regarding suitably priced dwellings available for inspection, sale or rental.

Providing false or inaccurate information regarding the availability of a dwelling for sale or rental to any person, including testers, regardless of whether such person is actually seeking housing.

- **Blockbusting:** It shall be unlawful, for profit, to induce or attempt to induce a person to sell or rent a dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, familial status, or national origin or with a handicap.

Prohibited actions include but are not limited to:

Engaging, for profit, in conduct (including uninvited solicitations for listings) which conveys to a person that a neighborhood is undergoing or is about to undergo a change in the race, color, religion, sex, handicap, familial status, or national origin of persons residing in it, in order to encourage the person to offer a dwelling for sale or rental.

Encouraging, for profit, any person to sell or rent a dwelling through assertions that the entry or prospective entry of persons of a particular race, color, religion, sex, familial status, or national origin, or with handicaps, can or will result in undesirable consequences for the project, neighborhood or community, such as a lowering of property values, an increase in criminal or antisocial behavior, or a decline in the quality of schools or other services or facilities.



- It shall be unlawful to deny any person access to or membership or participation in any multiple listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against any person in the terms or conditions of such access, membership or participation, because of race, color, religion, sex, handicap, familial status, or national origin.

Prohibited actions include but are not limited to:

Setting different fees for access to or membership in a multiple listing service.

Denying or limiting benefits accruing to members in a real estate brokers' organization.

Imposing different standards or criteria for membership in a real estate sales or rental organization.

Establishing geographic boundaries or office location or residence requirements for access to or membership or participation in any multiple listing service, real estate brokers' organization or other service, organization or facility relating to the business of selling or renting dwellings.

**In Mortgage Lending:** No one may take any of the following actions based on race, color, national origin, religion, sex, familial status or handicap:

- Refuse to make a mortgage loan
- Refuse to provide information regarding loans
- Impose different terms or conditions on a loan
- Discriminate in appraising property
- Refuse to purchase a loan or
- Set different terms or conditions for purchasing a loan

**In Addition:** It is illegal for anyone to:

- Threaten, coerce, intimidate or interfere with anyone exercising a fair housing right or assisting others who exercise that right
- Advertise or make any statement that indicates a limitation or preference based on race, color, national origin, religion, sex, familial status or handicap. This prohibition against discriminatory advertising applies to single-family and owner-occupied housing that is otherwise exempt from the Fair Housing Act.

### **Additional Protection If A Person Has A Disability**

If a person or someone associated with that person:

Has a physical or mental disability (including hearing, mobility and visual impairments, chronic alcoholism, chronic mental illness, AIDS, AIDS Related Complex and mental retardation) that substantially limits one or more major life activities

Has a record of such a disability or

Is regarded as having such a disability

- The landlord may not:

Refuse to let that person make reasonable modifications to the dwelling or common use areas, at that person's expense, if necessary for the handicapped person to use the housing. (Where reasonable, the landlord may permit changes only if the person agrees to restore the property to its original condition when he moves.)

Refuse to make reasonable accommodations in rules, policies, practices or services if necessary for the handicapped person to use the housing.

**Example:** A building with a "no pets" policy must allow a visually impaired tenant to keep a guide dog.

**Example:** An apartment complex that offers tenants ample, unassigned parking must honor a request from a mobility-impaired tenant for a reserved space near her apartment if necessary to assure that she can have access to her apartment.

However, housing need not be made available to a person who is a direct threat to the health or safety of others or who currently uses illegal drugs.

**Requirements for New Buildings:** In buildings that are ready for first occupancy after March 13, 1991, and have an elevator and four or more units:

- Public and common areas must be accessible to persons with disabilities
- Doors and hallways must be wide enough for wheelchairs
- All units must have:
  - An accessible route into and through the unit
  - Accessible light switches, electrical outlets, thermostats and other environmental controls
  - Reinforced bathroom walls to allow later installation of grab bars and
  - Kitchens and bathrooms that can be used by people in wheelchairs

If a building with four or more units has no elevator and will be ready for first occupancy after March 13, 1991, these standards apply to ground floor units.

These requirements for new buildings do not replace any more stringent standards in state or local law.

### **Housing Opportunities for Families**

Unless a building or community qualifies as housing for older persons, it may not discriminate based on familial status. That is, it may not discriminate against families in which one or more children under 18 live with:

- A parent
- A person who has legal custody of the child or children or
- The designee of the parent or legal custodian, with the parent or custodian's written permission

Familial status protection also applies to pregnant women and anyone securing legal custody of a child under 18.

**Exemption:** Housing for older persons is exempt from the prohibition against familial status discrimination if:

- The HUD Secretary has determined that it is specifically designed for and occupied by elderly persons under a federal, state or local government program or
- It is occupied solely by persons who are 62 or older or
- It houses at least one person who is 55 or older in at least 80 percent of the occupied units and adheres to a published policy statement that demonstrates an intent to house persons who are 55 or older.

A transition period permits residents on or before September 13, 1988 to continue living in the housing, regardless of their age, without interfering with the exemption.

**For Further Information:**

The purpose of this information is to summarize certain fair housing laws. The Fair Housing Act and HUD's regulations contain more detail and technical information. If you need a copy of the law or regulations, contact the HUD regional office nearest you or:

Office of Fair Housing and Equal Opportunity, Room 5116  
Department of Housing and Urban Development  
451 Seventh Street, S.W., Washington, D.C. 20410-2000  
(202) 708-2878